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EX PARTE OR LATE FILED

December 1, 1995

**EX PARTE**

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

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Re: In the Matter of Bell Operating Companies' Joint  
Petition for Waiver of Computer II Rules; Ameritech's  
Plan to Provide Comparably Efficient Interconnection to  
Providers of Personal Access Service, CC Docket Nos. 85-  
229, 90-623 and 95-20

Dear Mr. Caton:

This letter responds to the ex parte letter filed by US West, Inc., as well as the reply comments filed by Ameritech and BellSouth Telecommunications, Inc., concerning the CEI Plan filed by Ameritech for its Personal Access Service (PAS). Those filings confirm the basic point set forth in the Comments of MCI Telecommunications Corporation (MCI) in this matter -- namely, that Ameritech's PAS is primarily a basic call routing and forwarding service that must be tariffed and made available to other enhanced service providers (ESPs) on the same terms and conditions as are enjoyed by Ameritech's own enhanced service operations.

Although Ameritech denies that PAS is anything but entirely enhanced, BellSouth and US West concede, based on Ameritech's description of PAS, that its primary routing and forwarding functions are "adjuncts to basic service."<sup>1</sup> BellSouth and US West maintain, however, that such a characterization only means that PAS may be tariffed, not that it must be tariffed. MCI is not aware, however, that the Commission ever intended for the basic/enhanced dichotomy to be permissive. Contrary to BellSouth's and US West's understanding, all basic services are subject to full common carrier regulation under Title II of the Communications Act.<sup>2</sup> That means that all carriers must tariff

<sup>1</sup> BellSouth's Reply Comments at 2 (quoting North American Telecommunications Assoc., 101 FCC 2d 349, 359 (1985) (subsequent history omitted)).

<sup>2</sup> Amendment of Section 64.702 of the Commission's Rules and Regulations, 77 FCC 2d 384 (1980), mod. on reconsideration, 84 FCC 2d 50 (1981), mod. on further reconsideration, 88 FCC 2d 512

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all basic services.<sup>3</sup> It necessarily follows, as demonstrated by the Commission's recent Frame Relay Order, that if Ameritech cannot demonstrate that its PAS, or that a certain feature of its PAS, is enhanced, it must be tariffed.<sup>4</sup>

US West's and BellSouth's confusion on this elementary point appears to be the result of language in the NATA/Centrex Order<sup>5</sup> to the effect that call routing, forwarding and similar functions are "permissible adjuncts to basic services," or that such functions "may be offered as an adjunct to basic telephone service."<sup>6</sup> Such phrasing, however, obviously was not intended to mean that a carrier could decide to tariff or not tariff such features as it saw fit, as BellSouth and US West seem to believe. Rather, the clear import of that language was that carriers should have a choice as to whether such computer processing functions could be used to facilitate basic transmission; the Commission did not want to obstruct the efficient use of network capabilities by prohibiting the use of such functions as part of a tariffed basic service.<sup>7</sup>

Once a carrier chooses to employ such functions, e.g., call forwarding, to facilitate basic transmission service, however, it has no choice as to whether to tariff them. Such adjunct to basic functions "are not enhanced services," leaving them in the basic category.<sup>8</sup> In determining that a similar group of features constituted adjunct to basic services, the Commission found in the NATA/Centrex Order that since they did not "cross over the line between basic and enhanced services," they did not "go

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(1981), aff'd sub nom. Computer and Communications Industry Ass'n. v. FCC, 693 F.2d 198 (D.C. Cir. 1982), cert. denied, 461 U.S. 938 (1983).

<sup>3</sup> MCI Telecommunications Corp. v. AT&T, 114 S. Ct. 2223 (1994).

<sup>4</sup> Independent Data Communications Manufacturers Ass'n., Inc. Petition for Declaratory Ruling That AT&T's InterSpan Frame Relay Service Is a Basic Service, DA 95-2190 (Com. Car. Bur. released Oct. 18, 1995) (Frame Relay Order), at ¶¶ 40, 46.

<sup>5</sup> See n. 1, supra.

<sup>6</sup> NATA/Centrex Order, 101 FCC 2d at 359, 360, ¶¶ 24, 26.

<sup>7</sup> Id. at 358-61.

<sup>8</sup> Id. at 362, ¶ 31.

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beyond providing a basic" service.<sup>9</sup> In other words, there is a definite line between the two categories, and adjunct to basic services are always on the basic side of the line, not just when the carrier wishes to so classify them. US West's and BellSouth's wishful thinking that adjunct to basic features are not necessarily classified as basic services thus must be rejected.<sup>10</sup>

For the same reason, BellSouth's point (at 2-3) that PAS is offered through "an adjunct processor" is irrelevant. The Commission wanted to give carriers a choice as to whether to use computer processing functions to facilitate basic transmission services without having to deploy such capabilities outside the network, but that hardly suggests that once a capability is deployed outside the network, the essential purpose of the function -- to facilitate basic transmission -- becomes enhanced. If BellSouth's approach were correct, most "800" and other routing services would be enhanced, since they typically employ computers that are not collocated with a carrier's switch. Nothing in the NATA/Centrex Order suggests that carriers may remove routing and other basic functions from regulation simply by placing the processor controlling such functions "outside" the network.

At the same time, US West and BellSouth are correct that the call routing and forwarding functions of PAS constitute adjunct to basic services and rebut Ameritech's desperate attempt to squeeze its PAS entirely into the enhanced category. In its Reply Comments, Ameritech proudly points to what it characterizes as the PAS platform's interaction with each incoming call as evidence of its enhanced nature. A review of the features described on pages 2 and 3 of its Reply Comments, however, reveals them to be merely variations on the sort of garden variety routing that occupies large portions of carrier tariffs -- steering fax and voice calls to different terminations and processing caller-supplied PINs and other call screening functions. All of these functions simply "serve but one purpose: facilitating establishment of a transmission path over which a

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<sup>9</sup> Id. at 371, ¶ 53.

<sup>10</sup> US West's point that a customer-controlled reconfiguration feature should be considered enhanced when it is used to reconfigure an enhanced service hardly undermines MCI's position. Where a feature that otherwise falls within the definition of enhanced service is not used to facilitate the provision of a basic service, nothing in MCI's argument would suggest that such a feature should be considered basic.

telephone call may be completed."<sup>11</sup> As in the NATA/Centrex Order, the interaction that is involved in a caller's use of an authorization code<sup>12</sup> or the routing of a call to one of several terminations based on certain criteria<sup>13</sup> or the forwarding of caller information<sup>14</sup> "may place these services in the 'adjunct to basic' category ... but does not render them enhanced."<sup>15</sup> Thus, it is clear that PAS is primarily a routing and forwarding service, which is an adjunct to basic service, which must be tariffed.

As a back-up defense of Ameritech's approach, all three Bell Operating Companies (BOCs) fall back on the same argument -- that the integration of enhanced features, such as voice mail, on the same platform makes the entire platform enhanced. Ameritech and BellSouth present this point not so much as a regulatory interpretation but, rather, as a fait accompli; that it is simply technically infeasible to break out the enhanced features from the rest of the platform, leaving the Commission no choice but to accept enhanced status for the whole platform. As Ameritech puts it, the enhanced functions are "not merely 'accessed from the PAS platform' ... but [are] instead integral to the platform itself." All of the various enhanced functions are performed not by "a series of separate software functions," but, rather, "by use of the very same software."<sup>16</sup> The BOCs claim that it would be inherently inefficient to try to split up the functions provided by such software.

Other than simply asserting the conclusion that it would not be technically feasible to divide the PAS into its basic and enhanced functions, however, the BOCs have not shown why that should necessarily be the case. Taking Ameritech's description at face value, there would appear to be no reason why today's software could not be written to do just what MCI proposes, and to do so much more easily than previously, when such processing functions were collocated with a carrier's switches. That Ameritech might have deliberately designed PAS so that the various features could not easily be broken out into their proper

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<sup>11</sup> NATA/Centrex Order, 101 FCC 2d at 360, ¶ 26.

<sup>12</sup> Id. at 362, ¶ 30.

<sup>13</sup> Id. at 362, ¶¶ 30-31.

<sup>14</sup> Id. at 365-67.

<sup>15</sup> Id. at 363, ¶ 33.

<sup>16</sup> Ameritech Reply Comments at 4.

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categories should not be determinative. This is simply another attempt by a BOC to force the Commission to accept a certain architecture by asserting that its design inherently precludes any alternative approach. If it is just a matter of the "same software," there is no reason that the software could not be rewritten.

In any event, the Commission already made it clear in the NATA/Centrex Order that the mere circumstance that "a service cannot be provided" except in conjunction with other features does not necessarily determine the regulatory treatment of that service.<sup>17</sup> The basic/enhanced dichotomy is not applied according to carriers' convenience. As Ameritech states, the design of PAS uses "a widely-employed principle of computer architecture."<sup>18</sup> If the Commission were to allow Ameritech to treat PAS as entirely enhanced, large portions of dominant carrier services would disappear from tariffs overnight.

US West, at 2-3, makes one final desperate appeal for enhanced treatment for PAS based on the "contamination" theory. US West argues that the Commission has ruled that the combining of a carrier's basic transmission service with protocol conversion or other enhanced functions makes the entire service enhanced. It concludes that a contrary approach would make ONA and Computer III unworkable.

US West is obviously incorrect. If there were any doubts about that, they were erased five days after US West filed its ex parte letter by the Common Carrier Bureau's Frame Relay Order, which holds that the contamination theory applies only to non-facilities-based service providers.<sup>19</sup> All facilities-based carriers, such as Ameritech, must tariff all basic transmission services, whether or not those services are offered in conjunction with enhanced services. As the Bureau points out, application of the contamination theory to carriers "would allow circumvention of the Computer II and Computer III basic-enhanced framework," and quotes the Commission's prior statement in the Computer III Notice that application of the contamination theory to the BOCs would lead to "an improper policy result."<sup>20</sup> US

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<sup>17</sup> NATA/Centrex Order, 101 FCC 2d at 371 n.39 ("that a service cannot be provided outside the network does not preclude that service from being found to be enhanced").

<sup>18</sup> Ameritech Reply Comments at 4.

<sup>19</sup> Frame Relay Order at ¶¶ 42-45.

<sup>20</sup> Id. at ¶ 44 n.73.

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West's contamination argument must be rejected.

Accordingly, since the call routing and forwarding functions of the PAS are adjunct to basic services, they must be treated as basic and tariffed. Ameritech's CEI Plan for its PAS must therefore offer all other enhanced service providers the same access to the basic PAS functions that are used by Ameritech's own enhanced functions offered as part of the PAS platform. Since the CEI Plan submitted by Ameritech fails to do so, it must be rejected.

Yours truly,

  
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